

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

Dominick Barksdale

(b) County of Residence of First Listed Plaintiff Atlantic  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Saffren & Weinberg; 815 Greenwood Ave., Ste. 22  
Jenkintwon, PA 19046; 215-576-0100

## DEFENDANTS

Cup King, LLC f/k/a and/or d/b/a and/or a/k/a Smithville  
Eats Cafe and Nick HollandCounty of Residence of First Listed Defendant Cape May  
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

| CONTRACT  | TORTS  | FORFEITURE/PENALTY  | BANKRUPTCY   | OTHER STATUTES  |
|---|--|---|--|---|
| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury - Medical Malpractice<br><b>PERSONAL INJURY</b><br><input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 690 Other<br><b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Management Relations<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 751 Family and Medical Leave Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Employee Retirement Income Security Act<br><b>IMMIGRATION</b><br><input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><b>PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application<br><input type="checkbox"/> 840 Trademark<br><input type="checkbox"/> 880 Defend Trade Secrets Act of 2016<br><b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><b>FEDERAL TAX SUITS</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act<br><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))<br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)<br><input type="checkbox"/> 485 Telephone Consumer Protection Act<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 896 Arbitration<br><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision<br><input type="checkbox"/> 950 Constitutionality of State Statutes |
| <b>REAL PROPERTY</b><br><input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property  | <b>CIVIL RIGHTS</b><br><input type="checkbox"/> 440 Other Civil Rights<br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 445 Amer. w/Disabilities - Employment<br><input type="checkbox"/> 446 Amer. w/Disabilities - Other<br><input type="checkbox"/> 448 Education<br><b>PRISONER PETITIONS</b><br><b>Habeas Corpus:</b><br><input type="checkbox"/> 463 Alien Detainee<br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><b>Other:</b><br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition<br><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement  |   |  |   |

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 U.S.C.S Section 1981Brief description of cause:  
Racial Discrimination in Employment

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

April 9, 2021

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**DOMINICK BARKSDALE**  
**1403 Loretta Avenue**  
**Mays Landing, New Jersey 08330**  
**Plaintiff,**

**V.**

**CUP KING LLC**  
f/k/a and/or a/k/a and/or d/b/a  
**SMITHVILLE EATS CAFÉ**  
6300 Landis Avenue  
Sea Isle City, NJ 08243  
and  
**NICK HOLLAND**  
c/o CUP KING, LLC  
6300 Landis Avenue  
Sea Isle City, NJ 08243  
**Defendants.**

## Civil Action

## Jury Trial Demanded

## COMPLAINT

## **I. PRELIMINARY STATEMENT**

Plaintiff, Dominick Barksdale brings this action under 42 U.S.C.S. §1981. Plaintiff seeks equitable relief, compensatory and punitive damages, costs and attorney's fees from Defendants for Defendants' racial discrimination, retaliation, and other tortious actions. discriminatory practices, retaliation, and other tortious actions.

## II. JURISDICTION AND VENUE

1. Jurisdiction over this action is conferred on this Court by 28 U.S.C. §1331, 1343 and 42 U.S.C. §2000 e-5(f) and as this matter is one of Federal Question.

2. Plaintiff has complied with all jurisdictional prerequisites as he is not required to exhaust his administrative remedies under 42 U.S.C.S. §1981.

3. Venue is proper in the District of New Jersey, pursuant to 28 U.S.C. §1391 and 42 U.S.C.S. §1981.

4. At all times material hereto, Defendants Cup King, LLC f/k/a and/or a/k/a and/or d/b/a Smithville Eats Café and Nick Holland, (hereinafter collectively referred to as “Defendants”) were “engaged in an industry affecting commerce” within the meanings of §701(a) and 701(b) of Title VII, 42 U.S.C. §2000e and 42 U.S.C.S. §1981.

5. At all times material hereto, Defendant was an “employer” as defined by §701(b) of Title VII, 42 U.S.C. §2000 e and 42 U.S.C.S. §1981.

6. At all times material hereto, Plaintiff is afforded the protections provided under 42 U.S.C.S. §1981 as Plaintiff was discriminated against, on the basis of his Race.

7. At all times material hereto, Plaintiff was subjected to severe and pervasive harassment as enumerated *supra*.

8. This Honorable Court maintains Jurisdiction over this matter as it is one of Federal Question.

### **III. THE PARTIES**

9. Plaintiff, Dominick Barksdale (hereinafter “Barksddale”), is an adult male who is African American.

10. Upon information and belief, Defendants owned and operated a café named Smithville Eats Café, located at 45 South New York Avenue, Suite 204, Smithville, NJ 08203.

11. Upon information and belief, Jack Eck (hereinafter “Eck”), a Caucasian male, was

employed by Defendants, as a supervisor, and at all times material hereto had the authority to discipline and terminate the Plaintiff.

12. At all times material hereto, the discrimination enumerated within this Complaint occurred within the State of New Jersey at Defendants', location in Smithville, New Jersey.

#### **IV. FACTUAL BACKGROUND**

13. Plaintiff was hired by Defendants on April 6, 2017, signing a contract for employment with the Defendants.

14. Defendants' employees Jack Eck, and chef Fred Freda signed Plaintiff's employment contract.

15. Plaintiff understood he had been hired by the Defendants as a chef.

16. During the course of his employment, Plaintiff was told by Eck that was unqualified, and that he "was not even a \$12.00 an hour line cook" and that he was not even qualified to "wash dishes."

17. Eck then told Plaintiff that Plaintiff could not work for the Defendants as it was "not the vision", which Plaintiff understood to be a disparaging comment about his race, African-American.

18. Plaintiff was pretextually terminated by the Defendants on April 13, 2017.

19. Any acts or omissions attributed herein to Defendants, were committed or omitted by its principals, directors, officers, managers, and/or employees who were acting in the course and scope of their employment with said Defendants.

20. At all times material hereto, Plaintiff was subject to harassment and discrimination based upon his Race, which included a hostile work environment and retaliation.

21. At all times material hereto the harassment, hostile work environment and discrimination to which Barksdale was subjected was unwelcome, severe and unreasonably altered the condition of his employment.

22. Barksdale was profoundly upset and affected by the discrimination, harassment and hostile work environment that he was subjected to during the course and scope of his employment.

23. During the course and within the scope of his employment with Defendants, Barksdale was treated less favorably than similarly situated, non-Black employees.

24. At all times material hereto, Eck aided and abetted the aforementioned harassment, hostile work environment and discrimination to which Plaintiff was subjected.

25. The aforementioned conduct of Defendants, their employees, and Eck was materially adverse and would dissuade a reasonable worker from exercising and/or attempting to exercise their rights and benefits under 42 U.S.C.S. §1981.

26. Notwithstanding, Plaintiff's complaints and clear indication to Defendant that the aforesaid comments and conduct were unwelcome, unwanted and upsetting, the harassing conduct and accusations continued throughout the course of his employment with Defendants.

27. At no time did Defendants, or any of the principles, supervisors, managers, officers, directors, or agents of Defendants, institute an effective grievance procedure designed to eliminate racial discrimination of employees and no reasonable steps were taken to prevent the same in the workplace; and if said policy existed; Defendant failed to follow any requirements of said policy.

28. As a direct and proximate result of Defendants' aforesaid acts and omissions, the

hostile work environment which was created thereby, and Defendants' discriminatory practices,  
Plaintiff:

- (a) was discharged from his employment to his great financial detriment;
- (b) was caused pain and suffering, physical injury and a loss of enjoyment of life; and
- (c) suffered severe emotional distress, embarrassment, humiliation and depression.

**COUNT I**  
**DOMINICK BARKSDALE V. CUP KING LLC f/k/a and/or a/k/a and/or d/b/a**  
**SMITHVILLE EATS CAFÉ and NICK HOLLAND**  
**VIOLATION OF THE EQUAL RIGHTS UNDER THE LAW 42 U.S.C.S. § 1981**

29. Plaintiff hereby incorporates by reference all of the aforementioned allegations set forth above.

30. The conduct of Defendants and their treatment of Barksdale, in his employment violated 42 U.S.C.S. §1981 as Plaintiff's discharge, harassment, hostile work environment, and discrimination was based upon his Race.

WHEREFORE, Plaintiff, Dominick Barksdale, demands judgment against Defendants, including:

- (a) A declaration that Defendants' actions as described herein violated Title 42 U.S.C.S. §1981;
- (b) equitable and declaratory relief;

(c) compensatory damages for Plaintiff's loss of past and present future income and benefits, pain and suffering inconvenience, embarrassment, emotional distress and loss of enjoyment of life;

(d) punitive damages;

(e) payment of interest and Plaintiff's attorney's fees and costs associated with bring the claim; and

(f) such other relief as this Court may deem appropriate under the circumstances.

**Respectfully submitted,**

**SAFFREN & WEINBERG**

**BY:** 

**MARC A. WEINBERG, ESQUIRE**

**Pa. Attorney I.D. No.: 039291990**

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**Dated:** 4/9/21